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INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE

Dated as of December 15, 1986

between

**CHRYSLER CAPITAL CORPORATION,
as Lessor**

and

**UNION CARBIDE CORPORATION,
as Lessee**

541 Railroad Covered Hopper Cars and 93 Railroad Tank Cars

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EQUIPMENT LEASE

EQUIPMENT LEASE dated as of December 15, 1986 (this Lease) between **CHRYSLER CAPITAL CORPORATION**, as lessor (the Lessor), and **UNION CARBIDE CORPORATION**, as lessee (the Lessee).

SECTION 1. Definitions; Construction of References.

In this Lease, unless the context otherwise requires:

(a) All references in this Lease to designated Sections and other subdivisions are to designated Sections and other subdivisions of this Lease, and the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Section or other subdivision.

(b) The terms defined in this Section or elsewhere in this Lease shall, for purposes of this Lease and all Exhibits hereto, have the meanings assigned to them in this Section or elsewhere and include the plural as well as the singular and the singular as well as the plural.

(c) Except as otherwise indicated, all the agreements or instruments herein defined shall mean such agreements or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof.

(d) The following terms shall have the following meanings for all purposes of this Lease:

Abatements shall have the meaning set forth in Section 6 hereof.

After-Tax Basis shall mean on a basis such that any payment received or deemed to have been received by any Person shall be supplemented by a further payment to that Person so that the sum of the two payments shall, after deduction of all income taxes, penalties, fines, interest and other charges (taking into account any related credits or deductions) resulting from the receipt (actual or constructive) of such payments imposed by or under any Federal, state or local law or governmental authority in the United States or subdivision or any taxing authority of any thereof, be equal to the payment received or deemed to have been received.

Aggregate Purchase Price shall have the meaning set forth in Section 17 hereof.

Appraisal shall mean a procedure whereby two qualified independent appraisers, one chosen by the Lessee and one by the Lessor, shall mutually agree upon the amount and/or the remaining useful life in question. The Lessor or the Lessee, as the case may be, shall deliver a written notice to the other party appointing its appraiser within 30 days after receipt from the other party of a written notice appointing that party's appraiser. If within 30 days after appointment of the two appraisers, as described above, the two appraisers are unable to agree upon the amount and/or the remaining useful life in question, a third qualified independent appraiser shall be chosen within 10 days thereafter by the mutual consent of such first two appraisers or, if such first two appraisers fail to agree upon the appointment of a third appraiser, such appointment shall be made by an authorized representative of the American Arbitration Association or any organization successor thereto. The results of the third appraiser so appointed and chosen shall be given within 30 days after the selection of such third appraiser and the values determined by the three appraisers shall be averaged, the determination which shall differ most from such average shall be disregarded, the remaining two determinations shall be averaged, and such average shall be binding and conclusive on the Lessor and the Lessee. The Lessee shall pay the fees and expenses of the appraiser appointed by it hereunder; the Lessor shall pay the fees and expenses of the appraiser appointed by it hereunder; and the Lessor and the Lessee shall each pay half of the fees and expenses of the third appraiser.

Basic Lease Rate Factor shall mean with respect to each Leased Item constituting Group A Equipment, 6.507413% for each Basic Rent Date from and including the First Basic Rent Date to and including the Basic Rent Date occurring on December 31, 1991 and 7.953439% for each Basic Rent Date from and including the Basic Rent Date occurring on June 30, 1992 to and including the Last Basic Rent Date; with respect to each Leased Item constituting Group B Equipment, 5.870333% for each Basic Rent Date from and including the First Basic Rent Date to and including the Basic Rent Date occurring on December 31, 1991 and 7.174792% for each Basic Rent Date from and including the Basic Rent Date occurring on June 30, 1992 to and including the Last Basic Rent Date; with respect to each Leased Item constituting Group C Equipment, 6.332152% for each Basic Rent Date from and including the First Basic Rent Date to and including the Basic Rent Date occurring on December 31, 1991 and 7.739233% for each Basic Rent Date from and including the Basic Rent Date occurring on June 30, 1992 to and including the Last Basic Rent Date; and with respect to each Leased Item constituting Group D Equipment, 6.498167% for each Basic Rent Date from and including the First Basic Rent Date to and including the Basic Rent Date occurring on December 31, 1991

and 7.942138% for each Basic Rent Date from and including the Basic Rent Date occurring on June 30, 1992 to and including the Last Basic Rent Date.

Basic Lease Term shall have the meaning set forth in Section 3(a) hereof.

Basic Rent, Supplemental Rent and Rent shall have the meanings set forth in Section 3 hereof.

Basic Rent Dates shall mean June 30 and December 31 of each year.

Business Day shall mean any day other than a Saturday, Sunday or other day on which banks in Connecticut or New York are authorized to close.

Casualty Value shall have the meaning with respect to each Group of Equipment set forth in Exhibit C hereto.

Certificate of Acceptance shall mean a certificate of acceptance substantially in the form of Exhibit B hereto.

Claims shall have the meaning set forth in Section 15 hereof.

Closing Date shall mean December 31, 1986.

Code shall mean the Internal Revenue Code of 1986, as amended to the date hereof.

Cut-Off Date shall mean December 31, 1986.

Default shall mean an event which, after the giving of notice or lapse of time, or both, would mature into an Event of Default.

Equipment, and individually, an Item or Item of Equipment, shall mean the railroad cars described in Exhibit A hereto.

Event of Default shall have the meaning set forth in Section 19 hereof.

Event of Loss with respect to a Leased Item shall mean any one of the following events: (i) such Leased Item is lost, stolen, destroyed, or, in Lessee's opinion, irreparably damaged or permanently rendered unfit for use from any cause; (ii) use of such Leased Item is taken by any governmental authority within the United States of America and the Lessee or the Lessor is in fact denied the use of the Leased Item at the end of the Term of such Leased Item;

(iii) use of such Leased Item is taken by any foreign governmental authority for (A) a stated term which extends beyond remaining Term of such Leased Item or for an indefinite term and in either case Lessee is in fact denied the use of such Leased Item for more than one year or for the remaining Term of such Leased Item if the remaining Term is less than one year; (iv) use of such Leased Item is taken by any governmental authority and Lessee elects at any time thereafter while the taking continues to treat such taking as an Event of Loss; (v) title to such Leased Item is taken by any governmental authority (clauses (ii)-(v) above hereinafter referred to as **Requisition of Use**); or (vi) the Lessor shall not have acquired good and valid title to such Leased Item as of the Closing Date as a result of any fraudulent conveyance or transfer statute or similar statute or controlling judicial decision regarding such matter (the **Statutes and Decisions**). Each reference in this definition to a taking by a governmental authority includes a taking by a non-governmental entity acting under color of law.

Expiration Date shall mean December 31, 1996.

Fair Market Rental Value of a Leased Item shall be determined on the basis of, and shall mean the amount which would be obtainable in, an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) under no compulsion to lease and an informed and willing lessor under no compulsion to lease, in accordance with a lease on terms and conditions as herein provided. If the Lessor and the Lessee are unable to agree upon a determination of Fair Market Rental Value with respect to such Leased Item, such Fair Market Rental Value shall be determined in accordance with the procedure for Appraisal.

Fair Market Value of a Leased Item shall be determined on the basis of, and shall mean the amount which would be obtainable in, an arm's-length transaction between an informed and willing buyer or user (other than: (i) a lessee currently in possession, or (ii) a used equipment dealer) under no compulsion to buy and an informed and willing seller under no compulsion to sell, and in such determination costs of removal from the location of current use (including dismantling, shipping and reconstruction) shall not be a deduction from such value and all alternative uses in the hands of such buyer or user, including without limitation, further leasing of such Leased Item, shall be taken into account in making such determination. If the Lessor and the Lessee are unable to agree upon a determination of Fair Market Value with respect to such Leased Item, such Fair Market Value shall be determined in accordance with the procedure for Appraisal.

First Basic Rent Date shall mean June 30, 1987.

First Renewal Expiration Date shall mean December 31, 2001.

First Termination Date shall mean December 31, 1991.

Group A Equipment shall mean the Group of Equipment described as such in Exhibit A hereto.

Group B Equipment shall mean the Group of Equipment described as such in Exhibit A hereto.

Group C Equipment shall mean the Group of Equipment described as such in Exhibit A hereto.

Group D Equipment shall mean the Group of Equipment described as such in Exhibit A hereto.

Group of Equipment shall mean the classification of Leased Items as set forth in Exhibit A hereto.

Impositions shall have the meaning set forth in Section 10 hereof.

Improvement shall mean any accessory, equipment or device affixed to or installed upon a Leased Item or any improvement, modification, alteration or addition thereto other than as a replacement or repair.

Indemnified Person shall mean the Lessor and its agents and, to the extent permitted by Section 23 hereof, the successors and assigns of the Lessor.

Last Basic Rent Date shall mean December 31, 1996.

Late Payment Rate shall mean the simple rate of interest publicly announced by Chase Manhattan Bank, N.A., as its prime rate from time to time, plus one hundred fifty (150) basis points.

Lease Extension Period shall have the meaning set forth in Section 18 hereof.

Lease Supplement shall mean a supplement to the Lease entered into by the Lessor and the Lessee.

Leased Equipment, and individually, a **Leased Item**, shall have the meaning set forth in Section 2 hereof.

Lessor's Cost of a Leased Item shall mean the amount set forth in the Certificate of Acceptance therefor.

Lessor's Counsel shall mean Mudge Rose Guthrie Alexander & Ferdon.

Lessor's Liens shall mean any Liens either (i) created or granted by the Lessor, including any such Liens created or granted in connection with the purchase or financing of a Leased Item, or (ii) resulting from claims against the Lessor not related to the Lessor's ownership of a Leased Item.

Lien shall mean any mortgage, pledge, lien, charge, encumbrance, lease, exercise of rights, security interest or claim of any nature whatsoever.

Mileage shall have the meaning set forth in Section 16 hereof.

Net Economic Return shall mean the Lessor's after-tax rate of return on investment and net and periodic after-tax cash flows in the aggregate and per dollar of Lessor's Cost of the Leased Equipment, computed on the basis of the assumptions, including, without limitation, the tax assumptions, used by the Lessor in originally evaluating the transaction contemplated by this Lease.

Net Worth shall mean the excess of total assets over total liabilities, each determined in accordance with generally accepted accounting principles.

Nonseverable Improvement shall mean any Improvement which is defined as a "Nonseverable Improvement" within the meaning set forth in Revenue Procedure 79-48, 1979-2 Cum. Bull. 529 as amended or supplemented from time to time.

Parts shall mean all appliances, parts, instruments, appurtenances, accessories and other equipment of whatever nature, which may from time to time be incorporated or installed in or attached to a Leased Item.

Person shall mean any individual, partnership, corporation, trust, unincorporated association or joint venture, a government or any department or agency thereof, or any other entity.

Proceeds of Re-letting shall have the meaning set forth in Section 20 hereof.

Prospectus shall mean the Prospectus dated December 12, 1986 relating to the Common Stock of the Lessee.

Purchase Documents shall mean the bill of sale which conveys to the Lessor title to the Leased Equipment.

Replacement Parts shall have the meaning set forth in Section 11 hereof.

Renewable Equipment shall mean as to the Lease Extension Period or the Second Lease Extension Period, each Leased Item which shall have a remaining useful life of at least 25% of the Basic Lease Term plus the Lease Extension Period and, to the extent applicable, the Second Lease Extension Period as determined by an Appraisal as of the expiration of the Lease Extension Period or the Second Lease Extension Period, as the case may be.

Requisition of Use, see Event of Loss.

Second Lease Extension Period shall have the meaning set forth in Section 18 hereof.

Second Renewal Expiration Date shall mean December 31, 2006.

Securities Act shall mean the Securities Act of 1933, as amended.

Severable Improvement shall mean any Improvement which is defined as a "Severable Improvement" within the meaning set forth in Revenue Procedure 79-48, 1979-2 Cum. Bull. 529, as amended or supplemented from time to time.

Site shall have the meaning set forth in Section 7 hereof.

Subsidiary Lease shall mean the Equipment Lease dated as of December 15, 1986 between the Lessor, as lessor thereunder, and Union Carbide Ethylene Oxide/Glycol Company, as lessee thereunder.

Tax Indemnity Agreement shall mean the Tax Indemnity Agreement, dated as of December 15, 1986, between the Lessee and the Lessor as the same may be modified, amended and supplemented from time to time in accordance with the applicable provisions thereof.

Term shall mean each of the Basic Lease Term, the Lease Extension Period and the Second Lease Extension Period.

Termination Date shall have the meaning set forth in Section 17 hereof.

Termination Value shall have the meaning with respect to each Group of Equipment set forth in Exhibit C hereto.

Transaction Costs shall have the meaning set forth in Section 21 hereof.

SECTION 2. Acceptance and Lease of Equipment.

Subject to the satisfaction of the terms and conditions hereof, the Lessor hereby agrees to accept delivery from the Lessee under the applicable Purchase Documents and simultaneously to lease-back to the Lessee, and the Lessee hereby agrees to lease from the Lessor, the Items of Equipment (the **Leased Equipment**, and individually a **Leased Item**). Each Leased Item shall be subject to the terms and conditions of this Lease from the effective date of this Lease.

SECTION 3. Term and Rent.

(a) The term of this Lease shall begin on the effective date hereof and shall end on the Expiration Date (the **Basic Lease Term**), unless this Lease shall have been terminated, or the term of this Lease shall have been extended, by the terms hereof.

(b) The Lessee shall pay to the Lessor, as basic rent (herein referred to as **Basic Rent**) for each Leased Item, the following:

(1) on each Basic Rent Date occurring from and including the First Basic Rent Date to and including the Last Basic Rent Date, an amount equal to the applicable Basic Lease Rate Factor multiplied by the Lessor's Cost of such Leased Item; and

(2) on each Basic Rent Date occurring during the Lease Extension Period or the Second Lease Extension Period, an amount equal to the lesser of (i) Fair Market Rental Value of such Leased Item, determined in accordance with Section 18 hereof, or (ii) the aggregate payments described in clause (1) above with respect to such Leased Item divided by 40.

The Lessee agrees not to prepay any payment of Basic Rent except as specifically provided by the terms hereof.

(c) The Lessee shall pay to the Lessor the following amounts (herein referred to as **Supplemental Rent** and, together with all Basic Rent, as **Rent**):

(1) on demand, any amount due and payable hereunder or under the Tax Indemnity Agreement (other than Basic Rent, Casualty Value and Termination Value) to the Lessor or others;

(2) on the date provided herein, any amount payable hereunder as Casualty Value or Termination Value; and

(3) on demand, to the extent permitted by applicable law, interest (computed on the basis of a 360-day year and actual days elapsed) at the Late Payment Rate on any payment of Rent (other than Rent payable under this clause) not paid when due for any period during which the same shall be overdue.

The expiration or other termination of the Lessee's obligation to pay Basic Rent hereunder shall not limit or modify the obligations of the Lessee with respect to Supplemental Rent.

(d) All payments of Rent hereunder shall be made in immediately available funds (in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts) on the date payable hereunder, and all payments of Basic Rent and Supplemental Rent due or to become due hereunder shall be paid to the Lessor at its account at Chase Manhattan Bank, N.A., One Chase Manhattan Plaza, New York, New York 10081, account no. 036-1-069768, ABA #021000021, Attention: DFG, or at such other address or to such other Person as the Lessor may direct by notice in writing to the Lessee pursuant to the terms hereof.

(e) With respect to the Leased Equipment, if the aggregate of all Transaction Costs shall be other than \$-0-, then the amounts of Basic Rent, Casualty Value and Termination Value with respect to the Leased Equipment shall be adjusted by Lessor upward or downward to the extent necessary in order to preserve for the Lessor the Net Economic Return the Lessor would have realized if such event had not occurred or existed. Any adjustment required by this paragraph shall be effective as soon as possible. Such adjustment shall be evidenced by the execution and delivery by the Lessor and the Lessee of a Lease Supplement but failure to execute and deliver such Lease Supplement shall not affect the making of such adjustment pursuant to this paragraph. If requested by the Lessee, any computation under this paragraph shall be verified by a "big eight" accounting firm selected by the Lessor (other than the Lessor's independent accounting firm), which firm shall advise the Lessee and the Lessor as to whether the calculations submitted by the Lessor are based on the correct assumptions and are mathematically correct and the results of the verification by such firm shall be final and binding on the parties hereto; it being understood that Lessee shall not be informed as to, and shall not have any right to review, any of the actual data used by such firm in reaching its conclusion. The cost of such verification shall be paid by the Lessee unless such verification shall indicate that the Lessor's calculations were wrong by more than 5% of the amount calculated by the Lessor, in which event the cost of such verification shall be paid by the Lessor.

SECTION 4. Conditions Precedent to Purchase and Lease of Leased Equipment.

(a) **Conditions Precedent.** The obligation of the Lessor to purchase the Leased Equipment from the Lessee pursuant to the Purchase Documents on the Closing Date in respect thereof and to leaseback the Leased Equipment to the Lessee hereunder is subject to fulfillment of the following conditions:

(i) The Lessor shall have received evidence satisfactory in form and substance to it as to the following:

(1) The Lessor will receive on the Closing Date good and valid title to each Leased Item, free and clear of all Liens.

(2) This Lease has been duly filed for recordation with the Interstate Commerce Commission pursuant to Section 11303 of Title 49 of the United States Code.

(3) Appropriate Uniform Commercial Code financing statements naming the Lessor, as lessor, and the Lessee, as lessee, have been duly filed in the State of Connecticut.

(4) The aggregate amount of the Lessor's Cost of the Leased Equipment does not exceed \$16,733,970.

(5) Assuming the sale of the Leased Equipment by the Lessee to the Lessor is for valuable consideration and bona fide, such sale would not be a fraudulent conveyance under the laws of the State of Connecticut or the States where the Leased Equipment is located on the Closing Date.

(ii) The Lessor shall have received (A) the Original (as defined in Section 24(e) hereof) of this Lease, and (B) all Purchase Documents relating to the Leased Equipment.

(iii) The Lessor shall have received a certificate of the Lessee, dated the Closing Date, satisfactory in form and substance to it to the effect that the representations and warranties of the Lessee set forth herein are true and correct in all material respects on the Closing Date with the same effect as though made on such Closing Date, no Default or Event of Default has occurred and is continuing on the Closing Date, and the Lessee has satisfied all requirements set forth herein to be satisfied by it on or prior to the Closing Date.

(iv) The Lessor shall have received a favorable opinion of Kelley Drye & Warren, Lessee's counsel, dated the Closing Date, addressed to it and satisfactory in form and substance to it, to the effect set forth in paragraphs (1) through (5) of Section 5(a) hereof and to the further effect that (A) this Lease has been duly filed for recordation with the Interstate Commerce Commission pursuant to Section 11303 of Title 49 of the United States Code, (B) the Purchase Documents are effective instruments for the conveyance of title and (C) that no further action, including any filing or recording of any other document, is necessary in order to establish and perfect the Lessor's interest in the Leased Equipment as the Lessor as against the Lessee and any third party.

(v) No Default or Event of Default shall have occurred and be continuing on the Closing Date.

(vi) The Lessor shall have received executed copies, or sets of executed counterparts thereof, of this Lease, the Subsidiary Lease and the Tax Indemnity Agreement and photocopies of all Purchase Documents relating to the Leased Equipment. All of the foregoing documents shall have been duly authorized, executed and delivered by the respective party or parties thereto and shall be in full force and effect on the Closing Date, and the Lessor shall have received such evidence as to such authorization, execution and delivery as it or Lessor's Counsel shall request.

(vii) The Lessee shall have provided the Lessor with a report, in form and substance satisfactory to the Lessor, from Washington Service Bureau, Inc. as to the existence of Liens, if any, on the Leased Equipment.

(viii) The Lessor shall have received such other documents, certificates and opinions as it or Lessor's Counsel shall reasonably request.

(b) Each opinion of counsel delivered pursuant to this Section, and each opinion of local counsel relied upon by such counsel, may (i) be subject to appropriate qualification as to applicable bankruptcy or similar laws affecting enforcement of creditors' rights generally, (ii) rely as to matters relating to the laws of jurisdictions other than the United States and the jurisdiction in which counsel is admitted to practice on an opinion of qualified local counsel acceptable to the parties to whom such the local counsel's opinion is addressed, provided, however, that the local counsel's opinion must state that the addressee of relying counsel's opinion may rely upon such opinion of local counsel, (iii) be limited with respect to indentures, orders, mortgages, contracts or other

instruments of which counsel has knowledge (iv) state that the opinion is subject to qualification regarding the effect of certain laws and judicial decisions upon the enforceability of certain rights and remedies provided in this Lease; **provided, however,** that the opinion must further state that none of such laws in effect on the date of such opinion and none of such judicial decisions make the material rights and remedies provided in this Lease, taken as a whole, unenforceable.

SECTION 5. Representations, Warranties and Agreements of the Lessee.

(a) The Lessee represents and warrants that:

(1) **Due Organization.** The Lessee is a corporation duly incorporated, validly existing and in good standing under the laws of the State of New York and has all corporate powers and all material governmental licenses, authorizations, consents and approvals required to carry on its business as now conducted.

(2) **Due Authorization; Enforceability; No Violation.**

This Lease, the Tax Indemnity Agreement and the Purchase Documents have been duly authorized, executed and delivered by the Lessee and, assuming due authorization, execution and delivery by the other parties thereto, are legal, valid and binding obligations of the Lessee, enforceable against the Lessee in accordance with their respective terms. The execution and delivery by the Lessee of this Lease, the Tax Indemnity Agreement and the Purchase Documents are not, and the performance by the Lessee of its obligations under each will not be, inconsistent with its charter or by-laws, do not and will not contravene any law, governmental rule or regulation, judgment or order applicable to it, and do not and will not contravene any provision of, or constitute a default or result in the creation of any Lien (other than as permitted by Section 9 hereof) under, the material terms of any indenture, mortgage, contract or other instrument to which the Lessee is a party or by which it is bound or require the consent or approval of any trustee or holders of indebtedness or obligations of the Lessee, except such as have been duly obtained and copies of which have been delivered to Lessor's Counsel.

(3) **No Government Approvals, Notices and Filings.** No consent or approval of, giving of notice to, registration with, or taking of any action in respect of or by, any Federal, state or local governmental authority or agency or other Person is required with respect to the execution, delivery or performance by the Lessee of this Lease, the Tax Indemnity Agreement or the Purchase Documents except such as have been, or, in the ordinary course of business shall be, duly obtained, given or accomplished and copies or other evidence of which have been delivered to Lessor's Counsel.

(4) **Litigation.** There is no action, suit or proceeding pending against or, to the knowledge of the Lessee, threatened against or affecting the Lessee before any court or arbitrator or any governmental body, agency or official in which there is a reasonable possibility of an adverse decision which could materially adversely affect the present or prospective ability of the Lessee to perform its obligations under this Lease, the Tax Indemnity Agreement or the Purchase Documents or which in any manner draws into question the validity or enforceability of this Lease, the Tax Indemnity Agreement or the Purchase Documents.

(5) **Compliance.** The Lessee is not in default under the material terms of any indenture, mortgage or loan agreement nor is the Lessee in default under any other agreement or instrument of a material nature to which the Lessee is now a party or by which it is bound; nor is the Lessee in violation of the material terms of any law, order, injunction, decree, rule or regulation applicable to the Lessee of any court or administrative body, which violation could materially and adversely affect the business, property or assets, operations or condition, financial or otherwise, of the Lessee; and no event has occurred and is continuing which, under the provisions of any such indenture, mortgage or loan agreement, with the lapse of time or the giving of notice, or both, would constitute a default thereunder.

(6) **Warranty and Transfer of Title.** On the Closing Date, the Lessee shall have and will transfer to the Lessor good and valid title to the Leased Equipment, and such Leased Equipment shall be, to the best of the Lessee's knowledge after due inquiry, free and clear of all Liens. Notwithstanding the foregoing sentence, if any Liens exist on the Closing Date, the Lessee shall (i) remove such Liens within 30 days of knowledge thereof or (ii) to the extent permitted by Section 9 hereof, contest such Liens.

(7) **Taxes.** The Lessee has filed or caused to be filed all Federal, state and local tax returns which are required to be filed and has paid or caused to be paid all taxes shown to be due and payable on such returns or (except to the extent being contested in good faith and for the payment of which adequate reserves have been provided) on any assessment received by the Lessee, to the extent that such taxes have become due and payable.

(8) **Financial Statements.** The consolidated financial statements of the Lessee and its subsidiaries contained in the 10-K Annual Report, certified by KMG Main Hurdman, independent public accountants, fairly present the financial condition of the Lessee and its subsidiaries as of the dates indicated therein and the consolidated results of operations and changes in financial position for the periods therein specified; and said consolidated financial statements have been prepared in accordance with generally accepted principles

of accounting, applied on a consistent basis throughout the periods involved.

(9) **Prospectus.** The Lessor has been provided with a copy of the Prospectus. The Prospectus accurately describes the general nature of the business and principal facilities of the Lessee and its subsidiaries. As of its date, the Prospectus does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein not misleading.

(b) The Lessee agrees that:

(1) **Furnishing of Information.** During the term of the Lease, including any extensions thereof, the Lessee agrees to furnish to the Lessor:

(i) within 120 days after the close of each fiscal year of the Lessee, an audited consolidated balance sheet and consolidated statements of retained earnings and changes in financial position of the Lessee and its subsidiaries at and as of the end of such fiscal year, together with an audited consolidated statement of income of the Lessee and its subsidiaries for such fiscal year, **provided, however,** that the Lessee may satisfy the requirement set forth in this paragraph (i) by furnishing to the Lessor a copy of the Lessee's Annual Report on Form 10-K in respect of such fiscal year within 30 days of filing with the Securities and Exchange Commission;

(ii) within 45 days after the close of each of the first three quarters of each fiscal year of the Lessee, an unaudited consolidated balance sheet and consolidated statements of retained earnings and changes in financial position of the Lessee and its subsidiaries at and as of the end of such quarter, together with an unaudited consolidated statement of income of the Lessee and its subsidiaries for such quarter, **provided, however,** that the Lessee may satisfy the requirement set forth in this paragraph (ii) by furnishing to the Lessor a copy of the Lessee's Quarterly Report on Form 10-Q in respect of such quarterly period within 30 days of filing with the Securities and Exchange Commission;

(iii) within 120 days after the close of each fiscal year of the Lessee, a certificate of an authorized officer of the Lessee stating that he has reviewed the activities of the Lessee and that, to the best of his knowledge, there exists no Default or Event of Default, or if such a Default or Event of Default exists, specifying the nature and

period of existence thereof and the action the Lessee has taken or proposes to take with respect thereto;

(iv) within 30 days of filing with the Securities and Exchange Commission, copies of the Lessee's Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K;

(v) simultaneously with the mailing thereof to its shareholders, copies of all such financial statements, reports, notices or proxy statements as the Lessee shall mail to its shareholders; and

(vi) from time to time, such other public financial information as the Lessor may reasonably request.

(2) **Merger, Sale, etc.** The Lessee shall not consolidate or merge with or into any other corporation or sell, convey, transfer or lease all or substantially all of the property of the Lessee to any Person unless immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing. Upon any consolidation or merger of the Lessee with or into any other corporation or corporations (whether or not affiliated with the Lessee), or successive consolidations or mergers in which the Lessee or its successor or successors shall be a party or parties, or upon any sale or conveyance of all or substantially all of the property of the Lessee to any other Person, the Lessee will cause the due and punctual payment of all Rent and the due and punctual performance and observance of all covenants and obligations of the Lessee hereunder to be expressly assumed in writing (by an instrument in form and substance satisfactory to the Lessor) by the corporation (if other than the Lessee) formed by such consolidation, or the corporation into which the Lessee shall have been merged or by the Person which shall have acquired such property.

(3) **Location of Chief Executive Offices.** The chief executive office (as such term is used in Article 9 of the Uniform Commercial Code) of the Lessee is located at 39 Old Ridgebury Road, Danbury, Connecticut 06817, and the Lessee agrees to give the Lessor and Lessor's Counsel written notice of any relocation of said chief executive office from its present location.

(4) **Location of Leased Equipment.** The Lessee agrees to provide the Lessor with a certificate of an authorized officer of the Lessee within 30 days of the Closing Date specifying the location of each Leased Item as of the Closing Date. Any Leased Items located in any of the Class A Jurisdictions (as defined below) as of the Closing Date shall be deemed to have suffered an Event of Loss pursuant to clause (vi) of the definition of Event of Loss. If any Leased Items are located in any jurisdiction as of the Closing Date other than any

of the Class A Jurisdictions or any of the Class B Jurisdictions (as defined below) and if within 30 days of receipt of the certificate referred to in the first sentence of this paragraph the Lessor shall have advised the Lessee by written notice that in the Lessor's reasonable judgment an event of the type described in clause (vi) of the definition of Event of Loss may have occurred in respect of Leased Items in any such jurisdiction, the Lessee shall provide the Lessor with an opinion of counsel located in such jurisdiction, reasonably acceptable to the Lessor, as to the matters referred to in such notice. If said opinion of counsel is to the effect that the conveyance or transfer of title to the Lessor is not in violation of the Statutes and Decisions, then no Event of Loss pursuant to clause (vi) of the definition of Event of Loss shall be deemed to have occurred. For purposes of this paragraph, **Class A Jurisdictions** shall mean the States of Arizona, California, Colorado, Connecticut, Indiana, Kentucky, Nevada, Oklahoma, South Carolina, Utah and Virginia and the Canadian Province of Quebec. For purposes of this paragraph, **Class B Jurisdictions** shall mean the States of Alabama, Florida, Georgia, Iowa, Illinois, Louisiana, Maine, Michigan, Minnesota, Mississippi, North Carolina, New Hampshire, New Jersey, New York, Ohio, Tennessee, Texas and West Virginia and the Canadian Provinces of Alberta, British Columbia and Ontario.

SECTION 6. Net Lease.

(a) This Lease is a net lease, and the Lessee acknowledges and agrees that the Lessee's obligation to pay all Rent hereunder, and the rights of the Lessor in and to such Rent, shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counterclaim or recoupment (**Abatements**) for any reason whatsoever, including, without limitation, Abatements due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise, against any Person for whatever reason. Except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the obligations of the Lessee be affected, by reason of any defect in or damage to, or any loss or destruction of, any Leased Item or any part thereof from whatsoever cause, or the interference with the use thereof by the Lessor or any Person, or the invalidity or unenforceability or lack of due authorization of this Lease or lack of right, power or authority of the Lessor to enter into this Lease, or any failure of the Lessor to perform any obligation of the Lessor to the Lessee or any other Person under this Lease or any instrument or document executed in connection herewith, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law or regulation to the contrary notwithstanding, it being the express intention of the Lessor and the Lessee that all Rent payable by the Lessee hereunder shall be, and continue to be, payable in all events unless the obligation to pay the same shall be terminated pursuant to the express

provisions of this Lease. The Lessee hereby waives, to the extent permitted by applicable law, any and all rights that it may now have or that at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease except in accordance with the express terms hereof. If for any reason whatsoever this Lease shall be terminated in whole or in part by operation of law or otherwise except as specifically provided herein, the Lessee nonetheless agrees to pay an amount equal to each payment of Rent hereunder at the time such payment would have become due and payable in accordance with the terms hereof had this Lease not been terminated in whole or in part. Each payment of Rent hereunder made by the Lessee shall be final and the Lessee will not seek or have any right to recover all or any part of such payment from the Lessor for any reason whatsoever.

(b) The provisions of this Section shall in no way prohibit or restrict the Lessee from maintaining any direct cause of action against the Lessor for damages in respect of a breach of its warranties set forth in Section 8(a) hereof.

SECTION 7. Return of Leased Equipment.

(a) **Upon Expiration of Term.** Upon the expiration or termination of this Lease or any extension thereof, the Lessee, at its own risk, cost and expense and upon receipt of the prior written notice from the Lessor, shall, with respect to each Leased Item, (i) ship such Leased Item to a site (Site) described below designated in such notice or (ii) tender such Leased Item to a railroad freight collect consigned in accordance with such notice, which shall state the destination of such Leased Item.

If the Lessor fails to give the Lessee such notice, the Lessee shall, at its own risk, cost and expense and upon five days written notice to the Lessor, ship such Leased Item to any convenient Site at the expiration of such Term. Upon arrival of such Leased Item at the Site described in clause (i) above or the Lessee's tender of any Leased Item under clause (ii) above, risk of loss shall pass to the Lessor.

A "Site" is a site within 50 miles of:

West

- (1) Los Angeles, California;
- (2) Torrance, California;

Midwest

(3) Chicago, Illinois;

Southwest

(4) North Seadrift, Texas;

(5) Texas City, Texas;

(6) Brownsville, Texas;

South

(7) Taft, Louisiana;

East

(8) South Bound Brook, New Jersey;

(9) Perth Amboy, New Jersey;

(10) Institute, West Virginia;

(11) South Charleston, West Virginia;

(12) Leetsdale, Pennsylvania.

(b) **Upon Event of Default.** If the Lessor shall terminate this Lease pursuant to Section 20(a)(ii) hereof, the Lessee shall forthwith deliver possession of the Leased Equipment to the Lessor. The Lessee, at its own risk, cost and expense, shall:

(i) ship each Leased Item to a Site designated in a notice from the Lessor to the Lessee;

(ii) store each Leased Item at the designated Site for a period of up to 180 days; and

(iii) tender each Leased Item to a railroad freight prepaid consigned in accordance with a notice from Lessor to Lessee stating the destination of such Leased Item.

The Lessor shall give the notice referred to in clause (iii) above before the end of the storage period. If the Lessor fails to give the Lessee such notice with respect to any Leased Item, the Lessee may remove such Leased Item from its Site after the expiration of the storage period and store it at the risk, cost and expense of the Lessee at such place as the Lessee may designate. Upon the Lessee's tender of each Leased Item under clause (iii) above, risk of loss with respect to such Leased Item shall pass to the Lessor. During any storage period pursuant to clause (ii) above, the Lessee shall maintain the insurance required by Section 14 hereof.

Without in any way limiting the Lessee's obligations under this Section 7(b), the Lessee irrevocably appoints the Lessor as the Lessee's agent during the continuance of an Event of Default to

demand and take possession of a Leased Item from anyone who has possession of it.

(c) **Condition of Equipment on Return.** Upon the delivery of the Leased Item to the Site described in clause (i) of Section 7(a) or the Lessee's tender of any Leased Item under clause (ii) of Section 7(a) or clause (iii) of Section 7(b), such Leased Item shall be in good operating order, repair and condition, ordinary wear and tear excepted, and it shall be free and clear of all Liens (except Lessor's Liens) of which the Lessee has knowledge after due inquiry. Notwithstanding the foregoing, if any Liens exist upon the return of any Leased Item, the Lessee shall remove such Liens within 30 days of knowledge thereof. Any Leased Item returned hereunder shall be suitable for use in interchange except for restrictions on interchange dependent on the age or ownership of such Leased Item.

SECTION 8. Warranty of the Lessor.

(a) The Lessor warrants that during the term of this Lease, if no Event of Default has occurred, the Lessee's or any permitted assignee's or sublessee's use of the Leased Equipment shall not be interrupted by the Lessor or anyone claiming solely through or under the Lessor and that the Lessee and any permitted assignee or sublessee shall be entitled to quiet enjoyment.

(b) The warranty set forth in paragraph (a) of this Section is in lieu of all other warranties of the Lessor, whether written, oral or implied with respect to this Lease or the Leased Equipment, and the Lessor shall not be deemed to have modified in any respect the obligations of the Lessee pursuant to Section 6 hereof, which obligations are absolute and unconditional. **THE LESSEE EXPRESSLY AGREES TO LEASE THE LEASED EQUIPMENT "AS IS". THE LESSOR SHALL NOT BE DEEMED TO HAVE MADE, AND THE LESSOR HEREBY DISCLAIMS, ANY OTHER REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN OR CONDITION OF THE LEASED EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF SUCH LEASED EQUIPMENT, ITS VALUE OR CONFORMITY OF SUCH LEASED EQUIPMENT TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE AGREEMENT OR AGREEMENTS RELATING THERETO, NOR SHALL THE LESSOR BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT OR ABSOLUTE LIABILITY IN TORT),** but the Lessor authorizes the Lessee, at the Lessee's expense, to assert for the Lessor's account, during the term of this Lease, so long as no Event of Default shall have occurred hereunder, all of the Lessor's rights under any applicable manufacturer's warranty and the Lessor agrees to cooperate with the Lessee in asserting such rights; **provided, however,** that the Lessee shall indemnify the Lessor and hold the Lessor harmless from and against any and all claims, and all costs, expenses, damages, losses

and liabilities incurred or suffered by the Lessor in connection with, as a result of, or incidental to, any action by the Lessee pursuant to the above authorization. Any amount received by the Lessee as payment under any such warranty shall be applied to restore the Leased Equipment to the condition required by Section 11 hereof and any excess after payment of all of the expenses incurred by the Lessee in asserting its rights thereunder shall be paid to the Lessor.

SECTION 9. Liens.

The Lessee will not directly or indirectly create, incur, assume or suffer to exist any Liens on or with respect to any Leased Item or any part thereof, the Lessor's title thereto or any interest of the Lessor therein (and the Lessee will promptly, at its own expense, take such action as may be necessary duly to discharge any such Lien), except (a) the respective rights of the Lessor and the Lessee as herein provided, (b) Lessor's Liens, (c) Liens for taxes or otherwise either not yet due or being contested by the Lessee in good faith with due diligence and by appropriate proceedings, and (d) inchoate or asserted materialmen's, mechanics', workmen's, repairmen's, employees' or other like Liens arising in the ordinary course of business of the Lessee and not delinquent. Notwithstanding the foregoing, the Lessee shall not permit Liens of the type contemplated by clause (c) above aggregating \$5 million or more to exist in respect of Leased Items with an aggregate Lessor's Cost of \$5 million or more if the Lessee's long-term indebtedness shall have a rating from Moody's Investors Service which is less than Ba.

SECTION 10. Taxes.

(a) Except as provided in the last sentence of this paragraph, the Lessee shall pay and indemnify each Indemnified Person for, and hold such Indemnified Person harmless; on an After-Tax Basis, from and against, all license and registration fees, income, franchise, gross receipts, sales, use, excise, personal property, ad valorem, value added, leasing, leasing use, stamp or other taxes, levies, imposts, duties, charges, or withholdings of any nature, together with any penalties, fines or interest thereon (**Impositions**), arising out of the transactions contemplated by this Lease or any other documents contemplated hereby or thereby and imposed against such Indemnified Person, the Lessee or any Leased Item or any part thereof by any Federal, state, local government or other taxing authority upon or with respect to such Leased Item or any part thereof or upon the sale, purchase, ownership, delivery, leasing, possession, use, operation, return, transfer or other disposition thereof, or upon the rentals, receipts or earnings arising therefrom, or upon or with respect to this Lease. Notwithstanding the foregoing

(but only in jurisdictions in which such Indemnified Person would have been subject to such Impositions other than as a result of the transactions contemplated by this Lease or any other documents contemplated hereby or thereby), the Lessee shall not be liable for, and Impositions shall not include, any taxes based upon or measured by any Indemnified Person's net income, capital gains, personal holding company income, excess profits, accumulated earnings or items of tax preference; gross receipts not in the nature of or similar to a sales or use tax; any taxes resulting from the voluntary or involuntary disposition of this Lease or any Leased Item, provided an Event of Default has not occurred; any tax measured by such Indemnified Person's capital, loans or investment; and any tax capitalized as a cost of the Leased Equipment (as long as such costs are paid by the Lessee); provided, further, however, that the Lessee shall not be required to indemnify any Indemnified Person other than the Lessor in an amount greater than the amount the Lessee would have been required to indemnify the Lessor had the identical Claim been presented by the Lessor.

(b) If a claim is made against any Indemnified Party for any Impositions indemnifiable pursuant to this Section, such Indemnified Party shall promptly notify the Lessee; provided, however, that any delay in notifying or failure to notify Lessee shall not affect the Lessee's obligations under this Section, unless (i) such delay or failure precludes a contest of such claim and (ii) the Lessee shall have delivered the opinion referred to in clause (A) below. Payments due from the Lessee to each Indemnified Party, or from any Indemnified Party to the Lessee (as the case may be) pursuant to this Section shall be promptly made to such Indemnified Party or the Lessee in immediately available funds, unless the claim giving rise to such payment is being contested pursuant to the provisions of this paragraph. If reasonably requested by the Lessee in writing and if requested by any Indemnified Party, after the Lessee shall have delivered to such Indemnified Party (A) an indemnity satisfactory to such Indemnified Party, (B) an opinion of counsel for the Lessee reasonably satisfactory to such Indemnified Party that there is a meritorious basis for a contest respecting an Imposition and (C) a statement confirming the obligation of the Lessee to pay an indemnity hereunder if the claim is adversely decided, such Indemnified Party shall, at the expense of the Lessee (including, without limitation, all reasonable out-of-pocket costs, expenses, losses, legal and accountants' fees and disbursements, penalties and interest), contest in good faith in the name of such Indemnified Party or, if requested by the Lessee and if permissible under applicable law, at the sole discretion of such Indemnified Party permit the Lessee to contest in good faith the validity, applicability or amount of such Imposition by (X) resisting payment thereof if practicable in the Indemnified Party's sole discretion, (Y) not paying the same except under protest, if protest is necessary and proper, and (Z) if payment has been made, using

reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings. If any Indemnified Party shall obtain a refund of all or any part of such Imposition paid by the Lessee, such Indemnified Party shall pay the Lessee the amount of such refund, provided that no Event of Default shall have occurred and be continuing hereunder, and provided, further, that such amount shall not be payable before such time as the Lessee shall have made all payments of indemnities to such Indemnified Party then due under this Section and under this Lease. If in addition to such refund such Indemnified Party shall receive an amount representing interest on the amount of such refund, the Lessee shall be paid the proportion of such interest which is fairly attributable to Impositions paid by the Lessee prior to the receipt of such refund. The Lessee shall not be deemed to be in default under this Section so long as it or any Indemnified Party shall diligently prosecute such contest pursuant to the provisions hereof.

(c) In case any report or return is required to be made with respect to any obligation of the Lessee under this Section or arising out of this Section, the Lessee will either (after notice to the Lessor) make such report or return in such manner as will show the ownership of the Leased Equipment or any part thereof in the Lessor and send a copy of such report or return to the Lessor or will notify the Lessor of such requirement and make such report or return in such manner as shall be satisfactory to the Lessor. The Lessor agrees to cooperate fully with the Lessee in the preparation of any such report or return.

(d) The indemnities contained in this Section shall survive the termination or expiration of this Lease.

SECTION 11. Maintenance and Operation; Compliance and Use; Replacement Parts; Improvements; Equipment Marking; Personal Property.

(a) **Maintenance and Operation.** The Lessee shall operate each Leased Item only in the manner for which it was designed and intended (including, without limitation, for storage purposes) or in accordance with the customary practices of the Lessee. The Lessee shall maintain, inspect, service, repair and overhaul each Leased Item or cause the same to be done in accordance with the applicable standards set forth by the Association of American Railroads and the Federal Railroad Administration so as to maintain and keep each Leased Item (i) in as good operating condition as when delivered to the Lessee hereunder, ordinary wear and tear excepted, (ii) to a standard at least equal to the standard and frequency of maintenance performed on other similar railcars owned or leased by it, and (iii) in accordance with the material terms of applicable laws and regulations; provided, however, that for purposes of this subsection

(iii), the material terms of applicable laws and regulations shall include (but not be limited to) any provisions the violation of which would subject either the violator or the Lessor to criminal sanctions, or which would adversely affect the Lessor's title. Throughout the term of this Lease, the possession, operation and maintenance of all Leased Equipment shall be at the sole risk and expense of the Lessee. No voluntary relinquishment of possession or control of any Leased Item shall in any way discharge or diminish any of the Lessee's obligations hereunder, except upon the expiration or termination of this Lease.

(b) **Compliance and Use.** The Lessee agrees that the maintenance, use and operation of each Leased Item will not be in violation of the material terms of any statutes, laws, ordinances, regulations and mandatory standards or directives of any governmental agency applicable to the condition, maintenance, use or operation thereof (including the applicable standards of the Association of American Railroads and the rules of the United States Department of Transportation and the Interstate Commerce Commission), which violation could have a material adverse effect on the ownership of such Leased Equipment by the Lessor or its use and operation by the Lessee; **provided, however,** that for purposes of this paragraph, the material terms of any statute, laws, ordinances, regulations and mandatory standards or directives of any governmental agency shall include (but not be limited to) any provisions the violation of which would subject either the violator or the Lessor to criminal sanctions, or which would adversely affect the Lessor's title. Subject to the provisions of Section 16 hereof, the Lessee further agrees that the Leased Equipment will at all times (1) be used solely in the conduct of the Lessee's business and (2) be located and used within the continental United States, except that (i) not more than 49% of the Leased Equipment may be located and used in Canada from time to time, and (ii) not more than 10% of the Leased Equipment may be located and used in Mexico from time to time.

(c) **Replacement Parts.** Except as otherwise provided in the succeeding paragraph (d) of this Section, the Lessee, at its own cost and expense, will replace, prior to returning such Leased Item pursuant to Section 7 hereof, all Parts which may from time to time become worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever (such substituted parts hereinafter called **Replacement Parts**). The Lessee shall notify the Lessor of any Replacement Part having a per item cost of \$50,000 or more. In addition, in the ordinary course of maintenance, service, repair, overhaul or testing, the Lessee may, at its own cost and expense, remove any Parts, whether or not worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use, **provided that** the Lessee shall, at its own cost and expense, replace such Parts prior to returning such Leased Item pursuant to Section 7 hereof.

All Replacement Parts shall be free and clear of all Liens of which the Lessee has knowledge after due inquiry; **provided, however,** that if any Liens exist on any Replacement Parts, the Lessee shall (i) remove such Liens within 30 days of knowledge thereof or (ii) to the extent permitted by Section 9 hereof, contest such Liens. Additionally, all Replacement Parts shall be in at least as good operating condition as, and shall have a value and utility at least equal to, the Parts replaced assuming such replaced Parts were in the condition and repair required to be maintained by the terms hereof. Immediately upon any Replacement Part becoming incorporated or installed in or attached to a Leased Item as above provided, without further act, (i) title to the removed Part shall thereupon vest in the Lessee, free and clear of all rights of the Lessor, and shall no longer be deemed a Part hereunder, (ii) title to such Replacement Part shall thereupon vest in the Lessor, and (iii) such Replacement Part shall become subject to this Lease and be deemed part of such Leased Item for all purposes hereof to the same extent as the Part originally incorporated or installed in or attached to such Leased Item.

(d) (i) **Improvements.** The Lessee may, without the prior written consent of the Lessor, but solely at Lessee's expense, either (1) repair any Leased Item by the installation of a Replacement Part, or (2) affix, install or make any Nonseverable Improvement or Severable Improvement as the Lessee may deem desirable in the proper conduct of its business, **provided** no such Improvement materially diminishes the value and condition of such Leased Item.

(ii) **Nonseverable Improvement.** Title to any Nonseverable Improvement shall, upon installation or affixation, vest in the Lessor and thereupon such Nonseverable Improvement shall become a part of the Leased Item for all purposes hereof and become subject to this Lease.

(iii) **Severable Improvement.** Title to any Severable Improvement shall remain in, and be acquired at the expense of, the Lessee. So long as no Default shall have occurred and be continuing hereunder, the Lessee may remove any Severable Improvement at any time prior to the expiration or termination of this Lease. Severable Improvements which are not removed by the Lessee at or prior to the expiration or termination of this Lease or upon the expiration of the storage period described in Section 7 hereof shall become the property of the Lessor as of the date of such expiration or termination. The Lessor may by notice in writing require the Lessee to remove Severable Improvements within 30 days of the expiration or termination of this Lease.

(e) **Equipment Marking.** The Lessee agrees, at its own cost and expense, to (i) cause each Leased Item to be kept numbered with the identification or serial number therefor as specified in the

Certificate of Acceptance therefor, and (ii) affix and maintain on each Leased Item the following marking:

Chrysler Capital Corporation: Lessor and Owner

and such other markings as from time to time may be required by law or otherwise deemed necessary by the Lessor in order to protect the title of the Lessor to such Leased Item and the rights of the Lessor under this Lease. The Lessee will replace promptly at its own cost and expense any such marking which may be removed, defaced or destroyed.

SECTION 12. Inspection.

The Lessor shall have the right, but not the duty, to inspect the Leased Equipment. Upon the request of the Lessor, the Lessee shall confirm the location of each Leased Item and shall, at any reasonable time, make such Leased Item, and the Lessee's records pertaining to such Leased Item, available to the Lessor for inspection if doing so is within the Lessee's ability. The Lessor may make such inspection on the following conditions: (a) the places, times, manner and frequency of inspection shall be reasonable; (b) the inspection shall be subject to the Lessee's normal safety and security procedures; (c) the inspection shall be made only after reasonable prior notice to the Lessee; (d) unless Lessee is negligent, Lessee shall not be responsible for any injury to or death of any person making such inspection, and (e) the inspection shall be at Lessor's cost and expense. During a period of ninety days prior to the expiration of the Lease or any extension thereof or during any storage period provided in Section 7 hereof, a prospective purchaser of any Leased Item may, with the Lessee's prior consent, inspect any Leased Item on the same conditions as set forth above.

SECTION 13. Loss or Destruction; Requisition of Use.

(a) **Event of Loss.** Upon the occurrence of an Event of Loss with respect to a Leased Item, the Lessee shall notify the Lessor in writing promptly, but in any event within 30 days of knowledge thereof, and on the Basic Rent Date next following the date of such Event of Loss (unless such Event of Loss occurs within 30 days prior to such Basic Rent Date, in which case, on the next succeeding Basic Rent Date following the date of such Event of Loss) or, if such Event of Loss occurs after the Last Basic Rent Date, within 60 days after such Event of Loss, the Lessee shall pay to the Lessor the Casualty Value determined as of such Basic Rent Date, together with any Rent then due, less any proceeds actually received by the Lessor from a third party with respect to such Event of Loss. Upon making such payment in respect thereof and all Rent due and owing with respect

thereto, the Lessee's obligation to pay further Basic Rent for such Leased Item shall cease.

Following payment of the Casualty Value in respect of a Leased Item in accordance with the provisions of this Section, the Lessee shall, as agent for the Lessor, dispose of such Leased Item as soon as it is able to do so for the best price obtainable, but such disposition shall not be to the Lessee or any affiliate of the Lessee. Any such disposition shall be on an **as is, where is** basis without recourse, representation or warranty, express or implied. Provided no Event of Default shall have occurred and be continuing, the Lessee may, after paying the Lessor the amounts specified in this Section, retain all amounts of such price up to the Casualty Value of such Leased Item and the Lessee's reasonable costs and expenses of disposition attributable thereto, and shall remit the excess, if any, to the Lessor. In the event Casualty Value of such Leased Item and all other amounts due are paid by the Lessee and the Lessor shall actually receive thereafter any proceeds from a third party in respect of the Event of Loss giving rise to payment of such Casualty Value, then the Lessor, provided no Event of Default shall have occurred and be continuing, shall pay such proceeds to the Lessee within 5 days of receipt thereof.

Notwithstanding any provisions in this Section to the contrary, if an event described in clause (vi) of the definition of Event of Loss shall have occurred in respect of any Leased Item and the Lessor shall have notified the Lessee thereof within 60 days of the Closing Date, the Lessee shall purchase such Leased Item from the Lessor on the 5th day following such notice on an **as is, where is** basis without recourse, representation or warranty, express or implied, other than as to the absence of Lessor's Liens, and the Lessee shall pay to the Lessor the Fair Market Value of such Leased Item determined as of such payment date in accordance with the procedure for Appraisal plus the daily equivalent of the Basic Lease Rate Factor times the Lessor's Cost thereof for each day elapsed from and including the Closing Date to but excluding the date of payment plus any Supplemental Rent due and payable in respect of such Leased Item on or prior to such date.

Assuming compliance by the Lessee with the provisions of this Section in respect of any event described in clause (vi) of the definition of Event of Loss, then the Lessor shall have no other remedies in respect of such Event of Loss.

In the case of a requisition of use with respect to a Leased Item which does not constitute an Event of Loss, such requisition of use shall not terminate this Lease with respect to such Leased Item and each and every obligation of the Lessee with respect thereto shall remain in full force and effect. So long as no Event of Default shall have occurred and be continuing under this Lease,

the Lessee shall be entitled to all sums, attributable to the period such Leased Item is subject to this Lease, received by reason of any such requisition of use referred to in the preceding sentence up to the amount of the Basic Rent paid by the Lessee during the period of such requisition of use, and the Lessee shall be entitled to all amounts in excess of the Basic Rent.

(b) **Risk of Loss; No Release of Obligations.** Except as provided in this Section, the Lessee shall bear the risk of loss and shall not be released from its obligations hereunder in the event of any damage to any Leased Item or any part thereof or any Event of Loss relating thereto.

SECTION 14. Insurance.

(a) **Public Liability and Property Damage Insurance.** The Lessee will carry at its own expense public liability insurance and property damage insurance with respect to, and in amounts which are not less than, the public liability and property damage insurance applicable to similar equipment on which the Lessee carries insurance; **provided, however,** that in no event shall the public liability insurance be less than \$200 million. The Lessee may self-insure (by means of deductibles or otherwise) with respect to such public liability or property damage insurance in an amount not in excess of \$50 million.

(b) **Insurance Against Loss or Damage to the Leased Equipment.** The Lessee shall maintain in effect, at its own expense, casualty insurance which is of the type and with such reasonable deductibles and in substantially the amount carried by the Lessee on similar equipment; **provided, however,** that if (a) an Event of Default shall have occurred and be continuing, or (ii) the Lessee's consolidated stockholder's equity (determined in accordance with generally accepted accounting principles) shall be less than \$1 billion, the Lessee shall maintain casualty insurance in an amount which will not be less than the Casualty Value for the Leased Equipment from time to time (determined as of the next following Basic Rent Date).

(c) **Lessor as Additional Insured and Loss Payee; Notice.** Any policies of insurance carried in accordance with this Section and any policies taken out in substitution or replacement for any such policies (i) shall be amended to name the Lessor as owner of the Leased Equipment and as an additional assured and loss payee as its interest may appear, without liability for premiums on its part, (ii) with respect to insurance carried in accordance with the preceding paragraph (b) shall be made payable to the Lessee provided no Event of Default shall have occurred and be continuing and shall be made payable to the Lessor if an Event of Default shall have occurred and be continuing and shall be disbursed by the Lessor to the Lessee or

other appropriate Person in payment of the costs actually incurred with respect to repairs made to the Leased Equipment so as to restore it to the operating condition required by Section 11 hereof or shall be disbursed as otherwise required by this Lease, and (iii) shall be noncancellable during its term except upon 10 days' prior written notice to the Lessor. Each liability policy shall be primary without right of contribution from any other insurance which is carried by the Lessor to the extent that such other insurance provides it with contingent and/or excess liability insurance with respect to its interest as such in the Leased Equipment.

(d) **Reports, etc.** On or before the Closing Date for the Leased Equipment, and annually on the anniversary date thereof, the Lessee shall furnish to the Lessor a certificate of an appropriate officer of the Lessee describing in reasonable detail the insurance then carried and maintained on such Leased Equipment and certifying that such insurance complies with the terms hereof, together with a certificate of the insurer as to all such insurance, provided, however, that the certificate of the insurer required to be delivered on the Closing Date need not be delivered on such Date but shall be delivered as soon as practicable thereafter.

SECTION 15. Indemnification.

(a) The Lessee agrees to assume liability for, and does hereby agree to indemnify, protect, save and keep harmless each Indemnified Person on an After-Tax Basis from and against any and all liabilities, obligations, losses, damages, penalties, claims (including, without limitation, claims involving strict or absolute liability in tort), actions, suits, costs, expenses and disbursements (including, without limitation, legal fees and expenses) of any kind and nature whatsoever (Claims) which may be imposed on, incurred by or asserted against such Indemnified Person by a third party other than the Lessee, whether or not such Indemnified Person shall also be indemnified as to any such Claim by any other Person, in any way relating to or arising out of this Lease or any document contemplated hereby, or the performance or enforcement of any of the terms hereof or thereof, or in any way relating to or arising out of the manufacture, purchase, acceptance, rejection, ownership, delivery, lease, sublease, possession, use, operation, maintenance, condition, registration, sale, return, storage or other disposition of any Leased Item or any part thereof or any accident in connection therewith (including, without limitation, latent and other defects, whether or not discoverable and any Claim for patent, trademark or copyright infringement); provided, however, that the Lessee shall not be required to indemnify such Indemnified Person for (a) any Claim in respect of any Leased Item arising from acts or events which occur after possession of such Leased Item has been redelivered to the Lessor in accordance with Section 7 hereof, or (b) any Claim

resulting from acts which would constitute the willful misconduct or gross negligence of such Indemnified Person; provided, however, that the willful misconduct or gross negligence of an Indemnified Person shall not affect the rights of any other Indemnified Person hereunder or (c) any Claim covered by the terms of Section 10 hereof or by the Tax Indemnity Agreement; provided further, however, that the Lessee shall not be required to indemnify any Indemnified Person other than the Lessor in an amount greater than the amount the Lessee would have been required to indemnify the Lessor had the identical Claim been presented by the Lessor. If any Claim is made against the Lessee or an Indemnified Person, the party receiving notice of such Claim shall promptly notify the other. Each demand for payment hereunder by an Indemnified Party shall be accompanied by a certificate of the chief financial officer of such Indemnified Party to the effect that the calculations respecting such demand for payment are accurate. **THE LESSEE AGREES THAT THE LESSOR SHALL NOT BE LIABLE TO THE LESSEE FOR ANY CLAIM CAUSED DIRECTLY OR INDIRECTLY BY THE INADEQUACY OF THE LEASED EQUIPMENT OR ANY PART THEREOF FOR ANY PURPOSE OR ANY DEFICIENCY OR DEFECT THEREIN OR THE USE OR MAINTENANCE THEREOF OR ANY REPAIRS, SERVICING OR ADJUSTMENTS THERETO OR ANY DELAY IN PROVIDING OR FAILURE TO PROVIDE ANY THEREOF OR ANY INTERRUPTION OR LOSS OF SERVICE OR USE THEREOF OR ANY LOSS OF BUSINESS, ALL OF WHICH SHALL BE THE RISK AND RESPONSIBILITY OF THE LESSEE.**

(b) The indemnities contained in this Section shall survive the expiration or termination of this Lease.

SECTION 16. Sublease; Possession.

(a) The Lessee shall have the right to sublease any Leased Item; provided, however, that the Lessee shall obtain the prior consent of the Lessor, which consent shall not be unreasonably withheld, to any sublease of any Leased Item which (i) provides that responsibilities for servicing and maintenance of such Leased Item will remain with the Lessee and provides for a term in excess of 48 months, or (ii) which transfers the responsibilities for servicing and maintenance of such Leased Item to the sublessee and provides for a term in excess of 24 months. The Lessor shall respond within two (2) Business Days after receipt of any notice to it as to whether or not it consents to such sublease, and in the absence of a response within two Business Days, the Lessor shall be deemed to have consented thereto. No sublease shall be permitted hereunder unless (a) the rights of the sublessee thereunder are expressly subject and subordinate to the rights of the Lessor under this Lease, (b) the Lessee shall remain primarily liable for the performance of the terms and conditions of this Lease (other than to the extent contemplated above with respect to servicing and maintenance) and (c) the Lessee shall remain liable under the Tax Indemnity Agreement. No sublease or other voluntary relinquishment of the possession of any of the Leased

Equipment (except upon the expiration or termination of this Lease or as provided in Section 16(b)(ii) below) by the Lessee of any of its rights hereunder shall in any way discharge or diminish any of the Lessee's obligations to the Lessor hereunder.

(b) The Lessee shall have the right to assign all but not less than all of its rights hereunder (i) to a wholly-owned subsidiary of the Lessee, provided, however, that prior to such assignment the Lessor shall have received a guarantee by the Lessee of the obligations of such subsidiary under this Lease in form and substance satisfactory to the Lessor, and (ii) with the prior written consent of the Lessor, to any other Person, which assignment may provide for the release of the Lessee's obligations to the Lessor hereunder only if specifically agreed to by the Lessor.

(c) The Lessee shall not relinquish possession of any of the Leased Equipment or any part thereof except in accordance with the provisions of paragraphs (a) and (b) of this Section; provided, however, that the Lessee may in the normal course of its business, without the prior written consent of the Lessor, interchange any Leased Item with carriers in accordance with the interchange rules of the American Association of Railroads.

(d) The Lessor (or its designated agent) shall collect all mileage allowances, rentals and/or other compensation (hereinafter referred to as Mileage) payable by carriers by reason of the use, ownership or operation of the Leased Equipment, and, provided that no Event of Default has occurred and is continuing, the Lessor shall remit said Mileage so collected to the Lessee to the extent of the aggregate of the Basic Rent and any and all additional amounts payable pursuant to the terms hereof by the Lessee (all of which amounts, for the purpose of this Section 16(d) only, shall be deemed to be Credited Amounts), which shall have been paid by the Lessee to and including the date of any such remittance less the aggregate of any prior remittance of Mileage; provided, however, that if, at any time during the term of this Lease, or within 60 days after termination of this Lease, the Lessee shall furnish to the Lessor an opinion, ruling or other evidence reasonably satisfactory to the Lessor's legal counsel to the effect that the Lessor may lawfully remit to the Lessee all or any portion of said Mileage which exceeds the Credited Amounts hereunder, and if no Event of Default has occurred and is continuing, the Lessor shall remit such excess Mileage within ten days after demand therefor by the Lessee or, in the case of any such excess Mileage collected by the Lessor after such demand by the Lessee, within 30 days after the collection thereof by the Lessor. The obligation of the Lessor shall survive termination of this Lease.

SECTION 17. Voluntary Termination.

The Lessee shall have the right, at any time and from time to time on or after the First Termination Date, on at least 180 days' prior written notice to the Lessor (the 180-day notice), to terminate this Lease with respect to any or all Leased Items as the Lessee shall designate in the 180-day notice, such termination to be effective on the Basic Rent Date next following the expiration of the 180-day notice period but in no event prior to the First Termination Date (the Termination Date); provided, however, that no Default or Event of Default shall have occurred and be continuing hereunder and provided further, however, that the Lessee shall not have the right, at any one time, to terminate this Lease with respect to fewer than ten (10) Leased Items. The Lessee shall give the Lessor 120 days irrevocable notice (the 120-day notice) of its election to (a) cause such Leased Items to be sold to third parties as provided in paragraph (i) below or (b) purchase itself such Leased Items as provided in paragraph (ii) below. If no 120-day notice is given, the Lessee shall be deemed to have selected the purchase option specified in paragraph (ii) below.

(i) **Sale to Third Party.** Upon the Lessor's receipt of the 120-day notice electing to cause such Leased Items to be sold to third parties, the Lessor and the Lessee, as agent for the Lessor, each shall have the right during the period from the giving of such notice until the Termination Date to obtain bids for the purchase of such Leased Items. The Lessee shall certify to the Lessor in writing the amount of each bid received by the Lessee and the name and address of the party submitting such bid. On the Termination Date, the Lessor shall sell such Leased Items, on an as is, where is basis without recourse, representation or warranty, express or implied, other than as to the absence of Lessor's Liens, for cash to whomsoever shall have submitted the highest bid (other than the Lessee or any affiliate of the Lessee) prior to such date and shall transfer to such purchaser all of the Lessor's right, title and interest in and to such Leased Items. On the Termination Date, the Lessee shall deliver such Leased Items to the Lessor, or to such Person as the Lessor shall designate, in accordance with the terms of Section 7(a) hereof. The Lessor shall certify in writing to the Lessee (i) the amount of such total sale price, (ii) the reasonable out-of-pocket expenses incurred by the Lessor in connection with such sale, and (iii) that such total sale price represents the highest bid received by the Lessor for the purchase of such Leased Items. The total sale price realized at such sale shall be retained by the Lessor and, in addition, on the Termination Date, the Lessee shall pay to the Lessor (i) the Basic Rent payment payable on or

prior to such date, (ii) any Supplemental Rent due and payable on or prior to such date, and (iii) the amount, if any, by which (A) the Termination Value, computed as of the Termination Date, exceeds (B) the proceeds of such sale less all reasonable out-of-pocket expenses incurred by the Lessor in selling such Leased Items.

In the event no such sale has taken place five Business Days prior to the Termination Date, the Lessee shall have the option either (i) to pay to the Lessor (A) the Termination Value of the Leased Items with respect to which this Lease is being terminated, computed as of the Termination Date, (B) the Basic Rent payment payable on or prior to such date, (C) any Supplemental Rent due and payable on or prior to such date, and (D) all reasonable out-of-pocket expenses incurred by the Lessor in connection with the Lessor's efforts to sell such Leased Items and the Lessor shall retain title to such Leased Items; or (ii) to purchase such Leased Items for the Aggregate Purchase Price (as defined below) and in addition shall pay to the Lessor (A) the Basic Rent payment payable on or prior to such date, (B) any Supplemental Rent due and payable on or prior to such date, and (C) all reasonable out-of-pocket expenses incurred by the Lessor in connection with the Lessor's efforts to sell such Leased Items. Upon purchase of the Leased Items in accordance with clause (ii) of the preceding sentence, the Lessor shall transfer to the Lessee title to such Leased Items on an as is, where is basis without recourse, representation or warranty, express or implied, other than as to the absence of Lessor's Liens. Upon payment of all amounts required to be paid by the Lessee pursuant to this paragraph, the obligation of the Lessee for all Basic Rent accruing hereunder with respect to such Leased Items and due and payable after, but not on or before, the Termination Date shall cease, but the Lessee's obligation to pay Supplemental Rent, if any, shall remain unchanged.

(ii) **Right to Purchase.** Upon receipt by the Lessor of the Lessee's 120-day notice electing to purchase such Leased Items, or in the event the Lessee shall fail to give the 120-day notice, the Lessee shall purchase such Leased Items on the Termination Date for an aggregate purchase price (the **Aggregate Purchase Price**) equal to the higher of (a) the Termination Value of such Leased Items and (b) the Fair Market Value of such Leased Items determined in accordance with the procedure for Appraisal. On the Termination Date, the Lessor shall transfer to the Lessee title to such Leased Items on an as is, where is basis without recourse, representation or warranty, express or implied, other than

as to the absence of Lessor's Liens, and the Lessee shall pay to the Lessor (i) the Aggregate Purchase Price, (ii) the Basic Rent payment payable on or prior to such date and (iii) any Supplemental Rent due and payable on or prior to such date. Upon payment of all amounts required to be paid by the Lessee pursuant to this paragraph, the obligation of the Lessee for all Basic Rent accruing hereunder with respect to such Leased Items and due and payable after, but not on or before, the Termination Date, shall cease but the Lessee's obligation to pay Supplemental Rent, if any, shall remain unchanged.

SECTION 18. Lease Extension; Purchase Option.

(a) Provided that this Lease has not been terminated and provided that no Default or Event of Default shall have occurred and be continuing hereunder, the Lessee shall have the option to extend this Lease with respect to any or all Renewable Equipment (i) on the Expiration Date for a five-year period (the **Lease Extension Period**) beginning on the day following the Expiration Date and ending on the First Renewal Expiration Date and (ii) on the First Renewal Expiration Date for a five-year period (the **Second Lease Extension Period**) beginning on the day following the First Renewal Expiration Date and ending on the Second Renewal Expiration Date, in either case at the rental provided in clause (2) of paragraph (b) of Section 3 hereof. Not less than 210 days prior to the Expiration Date or the First Renewal Expiration Date, as the case may be, the Lessee may indicate, by written notice to the Lessor, the Lessee's interest in exercising the Lessee's lease extension option described above, which notice shall set forth the Lessee's estimate of the Fair Market Rental Value as of the Expiration Date or the First Renewal Expiration Date, as the case may be, of those Leased Items which the Lessee considers Renewable Equipment. If, on or before a date 180 days prior to the Expiration Date or the First Renewal Expiration Date, as the case may be, the Lessor and the Lessee are unable to agree as to which Leased Items are Renewable Equipment or the Fair Market Rental Value of such Renewable Equipment, such determination of the Leased Items constituting Renewable Equipment and the Fair Market Rental Value thereof shall be determined in accordance with the procedure for Appraisal. After a determination of which Leased Items constitute Renewable Equipment and the Fair Market Rental Value of such Renewable Equipment has been made in accordance with the procedure described above, the Lessee may exercise its option to extend the term of this Lease with respect to such Renewable Equipment for the rental provided in clause (2) of paragraph (b) of Section 3 hereof by delivering irrevocable written notice of such exercise to the Lessor not less than 120 days prior to the Expiration Date.

(b) **Purchase Option.** Provided that this Lease has not been terminated, the Lessee shall have the option to purchase any or all Leased Items on the Expiration Date, the First Renewal Expiration Date or the Second Renewal Expiration Date for a purchase price equal to the aggregate of the Fair Market Value of each Leased Item selected for purchase. Not less than 210 days prior to the Expiration Date, the First Renewal Expiration Date or the Second Renewal Expiration Date, as the case may be, the Lessee may indicate, by written notice to the Lessor, the Lessee's interest in exercising the Lessee's purchase option described above, which notice shall set forth the Lessee's estimate of the Fair Market Value of each Leased Item selected for purchase as of the Expiration Date, the First Renewal Expiration Date or the Second Renewal Expiration Date, as the case may be. If, on or before a date 180 days prior to the Expiration Date, the First Renewal Expiration Date, or the Second Renewal Expiration Date, as the case may be, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of such Leased Items, such Fair Market Value shall be determined in accordance with the procedure for Appraisal. After a determination of the Fair Market Value of such Leased Items has been made in accordance with the procedure described above, the Lessee may exercise its option to purchase such Leased Items for the Fair Market Value thereof by delivering irrevocable written notice of such exercise to the Lessor not less than 120 days prior to the Expiration Date.

SECTION 19. Events of Default.

The term **Event of Default**, wherever used herein, shall mean any of the following events under this Lease (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary, or come about or be effected by operation of law, or be pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) The Lessee shall fail to make any payment of Rent within 10 days after the same shall become due; or

(b) The Lessee shall fail to carry and maintain insurance on or with respect to the Leased Equipment in accordance with the provisions of Section 14 hereof or the Lessee shall operate the Leased Equipment at a time when, or at a place in which, any of the insurance required by the provisions of Section 14 shall not be in effect, in either case for a period of 10 days after knowledge thereof by the Lessee; or

(c) The Lessee shall fail to perform or observe any other material covenant, condition or agreement to be performed or observed

by it under this Lease or the Tax Indemnity Agreement and such failure shall continue for 30 days after knowledge thereof by the Lessee; or

(d) Any representation or warranty made by the Lessee in this Lease shall prove to have been incorrect in any material respect when any such representation or warranty was made or given; or

(e) Any long-term bank indebtedness of the Lessee for money borrowed existing on the effective date of this Lease shall have become defaulted or been declared by the holder thereof to be in default and shall have become accelerated or been declared by such holder to be accelerated as a consequence thereof; **provided, however,** that no such default and acceleration shall constitute an Event of Default hereunder if at any time the Lessee's long-term indebtedness shall have from Moody's Investors Service or Standard & Poor's Corporation a rating which is, or is equivalent to, or is better than, Baa or BBB, respectively; or

(f) The Lessee shall consent to the appointment of a receiver, trustee, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of itself or for any substantial part of its property, or the Lessee shall not pay or generally be unable to pay, or admit in writing its inability to pay, its debts generally as they come due, or shall make a general assignment for the benefit of creditors; or

(g) The Lessee shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any bankruptcy laws (as now or hereafter in effect) or an answer admitting the material allegations of a petition filed against the Lessee in any such proceeding, or the Lessee shall, by voluntary petition, answer or consent, seek relief under the provisions of any other now existing or future bankruptcy or other similar law (other than a law which does not provide for or permit the readjustment or alteration of the Lessee's obligations hereunder) providing for the reorganization or liquidation of corporations, or providing for an agreement, composition, extension or adjustment with its creditors; or

(h) An order, judgment or decree shall be entered by any court having jurisdiction in the premises for relief in respect of the Lessee in an involuntary case under any applicable bankruptcy, insolvency or other similar law (as now or hereafter in effect), or appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of the Lessee or for any substantial part of its property, or sequestering any substantial part of the property of the Lessee, or ordering the winding up or liquidating of the Lessee's affairs, and any such order, judgment or decree shall

remain in force undismissed, unstayed or unvacated for a period of 60 days after the date of entry thereof; or

(i) A petition against the Lessee in a proceeding under applicable bankruptcy laws or other insolvency laws (other than any law which does not provide for or permit any readjustment or alteration of the Lessee's obligations hereunder in each case), as now or hereafter in effect, shall be filed and shall not be withdrawn or dismissed within 90 days thereafter, or if, under the provisions of any law (other than any law which does not provide for or permit any readjustment or alteration of the Lessee's obligations hereunder in each case) providing for reorganization or liquidation of corporations which may apply to the Lessee, any court of competent jurisdiction shall assume jurisdiction, custody or control of the Lessee or of any substantial part of its property and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or unterminated for a period of 60 days; or

(j) Other than a judgment payable from insurance proceeds, final judgment for the payment of money in excess of 10% of the Lessee's Net Worth shall be rendered against the Lessee and the same shall not be complied with for a period of 120 days during which execution of such judgment shall not be effectively stayed or appealed.

SECTION 20. Remedies.

(a) Upon the occurrence of (i) any Event of Default (other than an Event of Default specified in Section 19(f), (g), (h) or (i) hereof) and so long as the same shall be continuing, the Lessor may, at its option, declare this Lease to be in default by written notice to such effect given to the Lessee, and (ii) any Event of Default specified in Section 19(f), (g), (h) or (i) hereof, this Lease shall terminate without any act or notice of any kind, all of which are hereby waived, and at any time thereafter, the Lessor may exercise one or more of the following remedies, as the Lessor in its sole discretion shall lawfully elect:

(i) Proceed by appropriate court action, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof;

(ii) By notice in writing terminate this Lease, whereupon all rights of the Lessee to the use of the Leased Equipment or any part thereof shall absolutely cease and terminate but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessee, if so requested by the Lessor, shall at its expense promptly return such Leased Equipment to the possession of the Lessor in accordance with the

terms of Section 7 hereof and in the condition required upon the return thereof pursuant to and in accordance with the terms hereof, or the Lessor, at its option, may, to the extent permitted by applicable law, enter upon the premises where such Leased Equipment is located and take immediate possession of and remove the same by summary proceedings or otherwise. The Lessee shall, without further demand, forthwith pay to the Lessor an amount equal to (i) any unpaid Basic Rent due and payable for all periods (or portions thereof) up to and including, but not after the date on which the Lessor has declared this Lease to be in default, (ii) any Supplemental Rent due and payable, and (iii), as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the Casualty Value, computed as of the Basic Rent Date following the date on which the Lessor has declared this Lease to be in default. Following the return of the Leased Equipment to the Lessor pursuant to this paragraph the Lessor shall, as soon as commercially practicable, proceed to either sell or re-let such Leased Equipment in a commercially reasonable manner. If the Lessor re-lets such Leased Equipment, the present value of the rental which shall be payable to the Lessor in connection with such re-letting for the period from the Basic Rent Date following the date on which the Lessor has declared this Lease to be in default to the end of the term of this Lease computed on the basis of a 7.0% per annum discount (compounded for the periodicity of the payment of rents under such re-letting) shall be referred to hereinafter as the Proceeds of Re-letting. The proceeds of such sale or the Proceeds of Re-letting, as the case may be, shall be applied by the Lessor (A) first, to pay all costs, charges and expenses, including reasonable legal fees and disbursements, incurred by the Lessor as a result of the default and the exercise of its remedies with respect thereto, (B) second, to pay to the Lessor an amount equal to any unpaid Rent then due and payable and the Casualty Value, to the extent not previously paid, and (C) third, to reimburse the Lessee for the Casualty Value to the extent previously paid by the Lessee as liquidated damages. Any surplus remaining thereafter shall be retained by the Lessor. To the extent that all Rent then due and payable with respect to the Leased Equipment and the Casualty Value in respect of such Leased Equipment have not been previously paid, the Lessee shall forthwith pay to the Lessor the sum of (1) the amount by which (X) the sum of (a) all Rent then due and payable with respect to such Leased Equipment, (b) the Casualty Value or portion thereof not theretofore paid, and (c) the amount payable under clause (A) of the preceding sentence, exceeds (Y) the sale price or the Proceeds of Re-letting, as the case may be, of such

Leased Equipment, and (2) interest at the Late Payment Rate on the full amount of such Rent due and payable as aforesaid and Casualty Value, computed from the date or dates such Rent or Casualty Value is payable hereunder until such Rent or Casualty Value is paid by the Lessee.

(b) The Lessee shall be liable for all costs, charges and expenses, including reasonable legal fees and disbursements, incurred by the Lessor by reason of the occurrence of any Event of Default and the exercise of the Lessor's remedies with respect thereto and whether or not suit is instituted.

(c) No remedy referred to herein is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Lessor at law or in equity. No express or implied waiver by the Lessor of any Default or Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent Default or Event of Default. The failure or delay of the Lessor in exercising any rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies and any single or partial exercise of any particular right by the Lessor shall not exhaust the same or constitute a waiver of any other right provided herein.

SECTION 21. Transaction Costs.

The Lessor hereby agrees to pay the fees, charges and expenses incurred by the Lessor in connection with the consummation of the transactions contemplated hereby, which only include (i) the reasonable legal fees, charges and expenses of Lessor's Counsel, (ii) the fees, charges and expenses of the appraisers in preparing and delivering the appraisal report of American Appraisal Associates, Inc. in respect of the Leased Equipment delivered prior to the effective date hereof and (iii) the reasonable legal fees, charges and expenses of Lessee's counsel (the Transaction Costs). In addition, the Lessor agrees to pay the brokerage fees of Boston Leasing Group, Inc. with respect to the transactions contemplated by this Lease.

SECTION 22. Notices.

All communications, consents and notices provided for herein shall be in writing and shall become effective when delivered in person or five days after deposited in the United States mail, with proper postage for first-class mail, prepaid, addressed (a) if to the Lessor, at 333 Elm Street, Dedham, MA 02026, Attention: Richard Maxwell and at Greenwich Office Park One, Greenwich, CT

06836, Attention: DFG Group Operations Manager, (b) if to the Lessee, at 39 Old Ridgebury Road, Danbury, CT 06817, Attention: Treasurer; or at such other address as any of the foregoing Persons may from time to time designate by notice duly given in accordance with the provisions of this Section to such other Persons.

SECTION 23. Successors and Assigns.

The Lessor may assign its rights under this Lease, but not a portion thereof, to (i) any, direct or indirect, wholly-owned subsidiary of Chrysler Corporation, or (ii) a bank or financial institution having a Net Worth of not less than \$75 million. This Lease, including all agreements, covenants, representations and warranties, shall be binding upon and inure to the benefit of, and may be enforced by, (1) the Lessor and its successors and agents and, to the extent permitted hereby, assigns, and, (2) the Lessee and its successors and agents and, to the extent permitted hereby, assigns.

SECTION 24. Amendments and Miscellaneous.

(a) The terms of this Lease shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by the Lessor and the Lessee.

(b) All agreements, indemnities, representations and warranties contained in this Lease shall survive the execution and delivery of this Lease and the expiration or other termination of this Lease.

(c) Any provision of this Lease which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(d) This Lease, the Tax Indemnity Agreement and the Purchase Documents represent the entire agreement of the parties hereto with respect to the subject matter hereof and supersede any and all prior understandings. This Lease shall constitute an agreement of lease and nothing herein shall be construed as conveying to the Lessee any right, title or interest in or to the Leased Equipment, except as lessee only.

(e) This Lease may be executed in any number of counterparts and by the different parties hereto on separate counterparts. The single executed original of this Lease marked "Original" shall be the "Original" and all other counterparts hereof shall be duplicates and be marked "Duplicate". To the extent that this Lease constitutes chattel paper, as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction, no security interest in this Lease may be created through the transfer or possession of any counterpart other than the "Original".

(f) This Lease has been negotiated and delivered in the State of New York and shall be governed by, and construed in accordance with, the laws of the State of New York.

(g) The division of this Lease into sections, the provision of a table of contents and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Lease.

(h) Although this Lease is dated as of the date first above written for convenience, the actual dates of execution hereof by the parties hereto are respectively the dates set forth under the signatures hereto, and this Lease shall be effective on the latest of such dates.

(i) Wherever in this Lease reference is made to the Lessor's after-tax return on and rate of recovery of investment (computed on the same assumptions as utilized by the Lessor in originally evaluating the transaction contemplated hereby), the Lessee shall have the right, upon written request to the Lessor, to have such assumptions verified by a representative of a firm of certified public accountants of recognized national standing selected by the Lessee, the cost of such verification shall be paid by the Lessee, unless such verification shall indicate that the Lessor's calculations were wrong by more than 5% of the amount calculated by the Lessor, in which event the cost of such verification shall be paid by the Lessor.

IN WITNESS WHEREOF, the parties hereto have each caused this instrument to be duly executed by their respective officers thereunto duly authorized as of the date set forth below.

CHRYSLER CAPITAL CORPORATION,
as Lessor

By R.C. Maffey
Title V.P.

Date: 12/31/86

UNION CARBIDE CORPORATION,
as Lessee

By J.A. Clerico GM
Title V.P. Treasurer

Date: 12/29/86

B

EXHIBIT A
to Lease

DESCRIPTION OF EQUIPMENT

The Equipment shall consist of the following:

Group A Equipment:

398 Railroad Covered Hopper Cars acquired by the Lessee
prior to 1981 (12 yr. ADR Property under the Code)

38 Railroad Tank Cars acquired by the Lessee prior to 1981
(12 yr. ADR Property under the Code)

Group B Equipment:

143 Railroad Covered Hopper Cars acquired by the Lessee in
1981 and 1984 (5 yr. ACRS Property under the Code)

Group C Equipment:

38 Railroad Tank Cars acquired by the Lessee between 1981
and 1983 (10 yr. ACRS Property under the Code)

Group D Equipment:

17 Railroad Tank Cars⁸ acquired by the Lessee between 1981
and 1983 (10 yr. Straight-Line Property under the
Code)

**EXHIBIT B
to Lease**

CERTIFICATE OF ACCEPTANCE

under

EQUIPMENT LEASE dated as of December 15, 1986 (the Lease) between **CHRYSLER CAPITAL CORPORATION**, as lessor (the Lessor), and **UNION CARBIDE CORPORATION**, as lessee (the Lessee).

The Lessee hereby certifies that each Leased Item set forth and described in Schedule 1 hereto (which Schedule includes the amount of the Lessor's Cost thereof) has been accepted by the Lessee under the Lease.

IN WITNESS WHEREOF, the Lessee has caused this Certificate of Acceptance to be duly executed by one of its officers thereunto duly authorized this day of December, 1986.

UNION CARBIDE CORPORATION,
as Lessee

By _____
Title _____

Accepted on the date set forth above on behalf of the Lessor:

CHRYSLER CAPITAL CORPORATION,
AS LESSOR

By _____
Title _____

EXHIBIT B
to Lease

SCHEDULE 1 TO
CERTIFICATE OF ACCEPTANCE

Description of Leased Equipment and Lessor's Cost:

| <u>Leased Item</u> | <u>Description</u> | <u>Serial Number</u> | <u>Lessor's Cost</u> |
|------------------------|--------------------|--------------------------|--------------------------|
|------------------------|--------------------|--------------------------|--------------------------|

Total Lessor's Cost

\$ _____

**EXHIBIT C
to Lease**

**CASUALTY VALUE
AND
TERMINATION VALUE**

The Casualty Value and Termination Value of each Leased Item in a particular group of Equipment shall be the percentage of the Lessor's Cost of such Leased Item set forth opposite the applicable rent payment date:

| <u>Basic Rent Date</u> | | <u>Casualty Value (a)</u> | <u>Termination Value (a)</u> |
|----------------------------------|------|-------------------------------|----------------------------------|
| I. Group A Equipment: | | | |
| December | 1986 | 105.0000% | 105.0000% |
| June | 1987 | 103.8680 | 103.8680 |
| December | 1987 | 102.5626 | 102.5626 |
| June | 1988 | 99.6687 | 99.6687 |
| December | 1988 | 97.5881 | 97.5881 |
| June | 1989 | 95.3546 | 95.3546 |
| December | 1989 | 92.9750 | 92.9750 |
| June | 1990 | 90.4429 | 90.4429 |
| December | 1990 | 87.7659 | 87.7659 |
| June | 1991 | 84.9350 | 84.9350 |
| December | 1991 | 81.9551 | 81.9551 |
| June | 1992 | 77.3729 | 77.3729 |
| December | 1992 | 72.5861 | 72.5861 |
| June | 1993 | 67.5806 | 67.5806 |
| December | 1993 | 62.3596 | 62.3596 |
| June | 1994 | 56.9062 | 56.9062 |
| December | 1994 | 51.2231 | 51.2231 |
| June | 1995 | 45.2930 | 45.2930 |
| December | 1995 | 39.1182 | 39.1182 |
| June | 1996 | 32.6971 | 32.6971 |
| December | 1996 | 25.0000 | 25.0000 |

EXHIBIT C
to Lease

| | | <u>Basic Rent Date</u> | <u>Casualty Value (a)</u> | <u>Termination Value (a)</u> |
|-----------------------------------|----------|----------------------------|-------------------------------|----------------------------------|
| II. Group B Equipment: | | | | |
| | December | 1986 | 105.0316% | 105.0316% |
| | June | 1987 | 104.0181 | 104.0181 |
| | December | 1987 | 102.7587 | 102.7587 |
| | June | 1988 | 101.2534 | 101.2534 |
| | December | 1988 | 99.5022 | 99.5022 |
| | June | 1989 | 97.5050 | 97.5050 |
| | December | 1989 | 95.2620 | 95.2620 |
| | June | 1990 | 92.7730 | 92.7730 |
| | December | 1990 | 90.0382 | 90.0382 |
| | June | 1991 | 87.0573 | 87.0573 |
| | December | 1991 | 83.8306 | 83.8306 |
| | June | 1992 | 79.0535 | 79.0535 |
| | December | 1992 | 74.0305 | 74.0305 |
| | June | 1993 | 68.7615 | 68.7615 |
| | December | 1993 | 63.2466 | 63.2466 |
| | June | 1994 | 57.4858 | 57.4858 |
| | December | 1994 | 51.4791 | 51.4791 |
| | June | 1995 | 45.2265 | 45.2265 |
| | December | 1995 | 38.7280 | 38.7280 |
| | June | 1996 | 31.9835 | 31.9835 |
| | December | 1996 | 24.9932 | 24.9932 |

**EXHIBIT C
to Lease**

| | | <u>Basic Rent Date</u> | <u>Casualty Value (a)</u> | <u>Termination Value (a)</u> |
|------------------------------------|----------|----------------------------|-------------------------------|----------------------------------|
| III. Group C Equipment: | | | | |
| | December | 1986 | 105.0000% | 105.0000% |
| | June | 1987 | 104.0081 | 104.0081 |
| | December | 1987 | 102.8200 | 102.8200 |
| | June | 1988 | 100.0406 | 100.0406 |
| | December | 1988 | 98.0519 | 98.0519 |
| | June | 1989 | 95.9001 | 95.9001 |
| | December | 1989 | 93.5943 | 93.5943 |
| | June | 1990 | 91.1286 | 91.1286 |
| | December | 1990 | 88.5007 | 88.5007 |
| | June | 1991 | 85.7028 | 85.7028 |
| | December | 1991 | 82.7323 | 82.7323 |
| | June | 1992 | 78.1785 | 78.1785 |
| | December | 1992 | 73.4042 | 73.4042 |
| | June | 1993 | 69.3981 | 69.3981 |
| | December | 1993 | 63.1604 | 63.1604 |
| | June | 1994 | 57.6763 | 57.6763 |
| | December | 1994 | 51.9455 | 51.9455 |
| | June | 1995 | 45.9526 | 45.9526 |
| | December | 1995 | 39.6968 | 39.6968 |
| | June | 1996 | 33.2041 | 33.2041 |
| | December | 1996 | 25.0000 | 25.0000 |

EXHIBIT C
to Lease

| | | <u>Basic Rent Date</u> | <u>Casualty Value (a)</u> | <u>Termination Value (a)</u> |
|------------------------|----------|----------------------------|-------------------------------|----------------------------------|
| IV. Group D Equipment: | | | | |
| | December | 1986 | 105.0000% | 105.0000% |
| | June | 1987 | 103.9101 | 103.9101 |
| | December | 1987 | 102.6684 | 102.6684 |
| | June | 1988 | 99.8408 | 99.8408 |
| | December | 1988 | 97.8407 | 97.8407 |
| | June | 1989 | 95.6905 | 95.6905 |
| | December | 1989 | 93.3885 | 93.3885 |
| | June | 1990 | 90.9270 | 90.9270 |
| | December | 1990 | 88.3040 | 88.3040 |
| | June | 1991 | 85.5112 | 85.5112 |
| | December | 1991 | 82.5466 | 82.5466 |
| | June | 1992 | 77.9609 | 77.9609 |
| | December | 1992 | 73.1462 | 73.1462 |
| | June | 1993 | 68.0907 | 68.0907 |
| | December | 1993 | 62.7936 | 62.7936 |
| | June | 1994 | 57.2406 | 57.2406 |
| | December | 1994 | 51.4302 | 51.4302 |
| | June | 1995 | 45.3477 | 45.3477 |
| | December | 1996 | 38.9912 | 38.9912 |
| | June | 1997 | 32.3818 | 32.3818 |
| | December | 1998 | 25.0000 | 25.0000 |

(a) In the event the Basic Lease Rate Factor is adjusted pursuant to Section 3(e) of the Lease or the Tax Indemnity Agreement, Casualty Values and Termination Values shall be adjusted accordingly.